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ARKANSAS SECURITIES DEPARTMENT

VIA REGULAR U.S. MAIL

July 18, 2018

Oleksandr Lutskevych
CEX.IO LTD
24th Floor One Canada Square
Canary Wharf, London
E14 5ab
United Kingdom

Karyn H. Tierney
Arkansas Bar No. 2003120
ktierney@securities.arkansas.gov

RE: CEX.IO LTD
No Action No. 18-NA-0006

Dear Mr. Lutskevych:

The Arkansas Securities Department ("Department") is in receipt of your letter dated June 4, 2018, and subsequent information provided thereafter, requesting that the Department issue a no-action letter concerning CEX.IO's claim of exemption from the licensing requirements of the Arkansas Uniform Money Services Act ("UMSA") as codified at Ark. Code Ann. § 23-55-101 through 1006. A copy of the request letter is attached for reference.

Based upon the specific facts contained in your request the Staff will not recommend that the Arkansas Securities Commissioner take an enforcement against CEX.IO if it does not obtain a license from the Department prior to engaging in the activities detailed in your request letter.

Please note that the position of the Staff of the Department is based solely upon the representations made in your request letter and information provided and applies only to the facts as set out therein. Different facts or circumstances might and often would require a different response or opinion from the Staff of the Department. The position of the Staff of the Department expressed in this letter only deals with anticipated enforcement action by the Department. Further, the position of the Staff of the Department does not purport to be and should not be interpreted to be a legal opinion.

Sincerely,

A handwritten signature in blue ink, appearing to be "K. Tierney", written over the printed name and title.

Karyn H. Tierney
Arkansas Securities Department



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CONFIDENTIAL

June 4, 2018

Via Email

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Re: CEX.IO Determination of Licensing Requirements

Dear Sir/Madam,

I am a CEO and a member of CEX.IO LTD ("CEX"), a limited liability company registered in the United Kingdom. I write to request a ruling from the Arkansas Securities Department (the "Department") on whether CEX's proposed business activity in the State of Arkansas requires a licensing with the Department.

CEX is headquartered in London and has a back-office in Kyiv, Ukraine. Its proposed business is an online virtual currency exchange allowing buyers and sellers of Bitcoin and other virtual currencies to trade with one another over the Internet. CEX currently supports several trading pairs, including US Dollars, Euros, Russian Rubles, Great Britain Pounds and virtual currencies – Bitcoin, Bitcoin Cash, Ether, Ripple and other virtual currencies. CEX does not provide government-issued currency pairs (e.g. USD/EUR). The platform is based on global exchange standards with state-of-the-art technology powering its matching engine, trade execution, security and privacy. You may find our service at <https://cex.io/>

I. CEX'S PROPOSED BUSINESS ACTIVITY

A. Instant and order book products

CEX offers two products:

1. an instant virtual currency purchase and sale product; and
2. an order book exchange product.

Using the **instant purchase option**, CEX displays a spot price based on the already open orders. The customer, instead of placing an order, simply enters the amount he or she desires to purchase or sell. CEX then executes a transaction using the quantity and the spot price. At the conclusion of any transaction, CEX funds the purchaser's CEX virtual currency wallet with the appropriate amount of virtual currency and the seller's fiat account with the appropriate number of dollars or euros.

Using the **order book exchange**, customers may place orders with CEX to purchase or sell virtual currency at a certain price and a certain quantity. CEX will then match those orders with orders placed by other customers and execute a transaction between the two customers on their order terms. CEX does not permit customers to identify each other when trading virtual currency for government currency or for another virtual currency, and does not permit its customers to transfer currencies to each other whatsoever. **In other words, CEX does not allow its customers to transfer any monetary value from person A to person B and therefore does not act as traditional money transmitter.** The user initiates all transactions by entering whether he or she wants to buy or sell, the amount he or she wants to trade, and the price in the web-based user interface or through mobile app.

CEX's revenue will be derived primarily from transaction fees it charges its customers in connection with trades made on the exchange. Currently, CEX charges a floating fee, which depends on monthly turnover and "Maker" or "Taker" role in the transaction (fee varies from .0% to 0.25% per transaction) for every trade through order book and fixed 7% through instant sale/purchase.

B. Funding and withdrawal

Customers may fund their CEX fiat balance with USD, EUR, RUB or GBP via credit cards or wire transfers. Customers may fund their CEX accounts' virtual balance with different virtual currencies by initiating a transaction from another wallet to an address CEX provides. CEX from time to time adds new currency pairs and removes currency pairs it provides for trading.

All fiat currencies received from customers are stored on CEX's fiat pooled accounts with an authorized financial institution (pooled account for USD; pooled account for EUR; etc., – within the bank, payment service provider, etc.). **We do not open separate bank or other financial accounts for our customers in financial institutions.** CEX holds customers' fiat funds only for purpose of enabling virtual currency purchase and trading within its service.

All virtual currencies received from customers are stored on CEX's internal pooled accounts for virtual currencies (pooled account for BTC; pooled account for ETH; etc.). Thus, funds of each particular customer are stored on pooled accounts that belong to CEX, and the balance of each customer is reflected on his/her profile interface.

Customers may withdraw fiat currency via wire transfer to an outside account by requesting a withdrawal amount and providing recipient banking information or to their credit/debit cards. Customers may withdraw virtual currency by requesting a withdrawal and specifying an amount and a receiving address. All customer currency balances are available for withdrawal at any time, subject only to velocity restrictions consonant with CEX's anti-money laundering and anti-fraud policies.

CEX does not provide or issue any virtual currency whatsoever. All virtual currency exchanged or traded by and between customers originates from the customers themselves. CEX maintains an internal ledger recording how much virtual currency each customer possesses, and all transactions between members are based on this ledger. Customer's virtual currency deposits and purchases are stored in encrypted multisignature wallets.

II. REGULATORY GUIDANCE ON VIRTUAL CURRENCIES

Through the Guidance¹ dated March 18, 2013, the Financial Crimes Enforcement Network ("FinCEN") addressed the status of virtual currencies under the Bank Secrecy Act and its implementing regulations.

Thus, the Guidance categorized virtual currency as a "decentralized convertible virtual currency", a medium of exchange that operates like currency, but is not issued or administered by any government. In other words, virtual currencies like Bitcoin function in the same manner as "real" currency and are "used and accepted as a medium of exchange," despite lacking legal tender status.

¹ Regulations to Persons Administering, Exchanging, or Using Virtual Currencies, FIN-2013-G001, <https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf>

At bottom, FinCEN took the position that, in determining whether a business is a money services business, it would not differentiate between real currencies and virtual currencies.

As such, businesses that exchange virtual currency for fiat currency are Money Services Businesses under federal law. CEX acknowledges this and complies with its obligations under federal law, including all applicable anti-money laundering and “Know Your Customer” recording and reporting requirements. CEX maintains its FinCEN registration from January 28, 2015. CEX has already retained legal counsel and compliance personnel to coordinate this process, which includes preparing and implementing risk-management policies designed to prevent the use of its systems by criminals. For the avoidance of doubt, the aim of this letter is not to seek the interpretation of federal law by the Department, but its determination of Arkansas law.

States, too, have begun to take positions on the treatment of virtual currencies under their law.

In April 2014, for example, the Texas Department of Banking (the “TDB”) issued a memorandum outlining its stance on Bitcoin and other forms of virtual currency. The TDB, interpreting Texas State law, found that virtual currencies like Bitcoin are not equivalent to U.S. dollars or other fiat currencies and not subject to regulation under Texas law. It reasoned that the Texas Money Services Act defines “money” or “monetary value” as “the coin and paper money of the United States or any country that is designated as legal tender and circulates and is customarily used and accepted as a medium of exchange in the country of issuance,”² and that this definition does not encompass virtual currency. Moreover, upon our request for ruling, the **Texas regulator** examined CEX’s proposed business model (which was the same as described herein) and expressed in the TDB’s response as of January 2018 that in case of exchanges of one virtual currency for another virtual currency no money transmission occurs, thus no license required. In February 2018, the same conclusion was made by the **New Hampshire Banking Department** based on New Hampshire law subject to amendments introduced by their House Bill 436³, in particular, performing exchange in form solely of convertible virtual currency CEX will not require to be licensed as a Money Transmitter.

Notably, the **Arizona Department of Financial Institution** evaluated CEX’s proposed business model in January 2018 and determined that no license is required for all possible cases of our activity, including direct exchange of fiat currency for virtual currency and vice versa. As well, earlier in August 2017, we received an appropriate response from the **Missouri Division of Finance** determining that currently no license is necessary to conduct our proposed activity; on their view, Bitcoin and other virtual currencies are rather commodity than a currency.

In March 2018, the **Michigan Department of Insurance and Financial Services** (the “DIFS”) stated that currently the DIFS is evaluating the developing market for Bitcoin and other forms of virtual currency, thus until DIFS makes this final determination regarding Bitcoin services, a money transmission license will not be required. According to the DIFS’s understanding, CEX does

² The Texas Money Services Act actually defined “money” or “monetary value” as currency or a claim that can be converted into currency, but defines “currency” as the coin and paper money of the United States or any country that is designated as legal tender and circulates and is customarily used and accepted as a medium of exchange in the country of issuance.

³ House Bill 436, <https://legiscan.com/NH/bill/HB436/2017>

not offer money transmission services in Michigan other than Bitcoin or other virtual currency related services.

The response we received from the **Indiana Department of Financial Institution** in the end of March 2018, stated that Indiana does not license virtual currency exchange services under their Statute. Since CEX is engaging in virtual currency exchange services, an Indiana Money Transmitter license would not be issued at this time.

In April 2018, we received the notification from the **North Dakota Department of Financial Institutions** regarding their position on transmission of virtual currency. According to the notification, control or transmission of virtual currency will not fall under the scope of the North Dakota Money Transmitter Act. Therefore, for those companies that only conduct this limited activity, there will be no licensing requirement.

Several responses were received from the US regulators in May 2018. Thus, the **Mississippi Department of Banking and Consumer Finance** stated that our operations, described herein, are exempted from licensure requirements for money transmitters in the State of Mississippi. The **Wisconsin Department of Financial Institutions** indicated CEX's activity does not require to be licensed due to CEX has no physical location in the state. Received feedback from the **Utah Department of Financial Institutions** declared virtual currency currently falls outside its jurisdiction. And the latest on May 22, 2018, we received a response form the **District of Columbia Department of Insurance, Securities and Banking**, which concluded CEX would not need to obtain a money transmitter license in D.C. to operate CEX's proposed business.

Besides, BitLicense, a specific set of rules in the State of New York related to virtual currency businesses entered into force, requiring such business to obtain a license from the New York Department of Financial Services.

Thus, we can see that approaches to virtual currency-related businesses vary significantly among the states regulators, and this is why we require a specific determination from the Department.

III. THE PROPOSED BUSINESS AND ARKANSAS LAW

As far as we know, the Department issued several warnings regarding virtual currency. The warning⁴ from 2014 stated that virtual currencies might be bought or sold through exchanges and the warning⁵ from 2016 summarized general information regarding the risks associated with virtual currencies. However, as of the date of this request we are not aware of any specific rules covering virtual currency-related businesses in the State of Arkansas.

Generally, pursuant to the Money Services Act (the "Law")⁶, a person may not engage in the

⁴ What's in your e-Wallet, <http://www.securities.arkansas.gov/userfiles/Virtual%20Currency.pdf>

⁵ The Next Big Thing, <http://www.securities.arkansas.gov/userfiles/Binary%20Options%20and%20Digital%20Currency.pdf>

⁶ Arkansas Uniform Money Services Act,

[http://www.securities.arkansas.gov/userfiles/Money%20Services%20Act%20Effective%20August%201.%202017\(1\).pdf](http://www.securities.arkansas.gov/userfiles/Money%20Services%20Act%20Effective%20August%201.%202017(1).pdf)

business of money transmission or advertise, solicit, or hold itself out as providing money transmission unless the person: (i) is licensed under this article; (ii) is an authorized delegate of a person licensed under this article; or (iii) is excluded under § 23-55-103.

Further, “money transmission” means selling or issuing payment instruments, stored value, or receiving money or monetary value for transmission. “Money transmission” does not include providing delivery services such as courier or package delivery services or acting as a mere conduit for the transmission of data.

In line, the Law contains the following definitions of the above mentioned principal terms of licensed activity:

- “Payment instrument” means a check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services;
- “Stored value” means monetary value that is evidenced by an electronic record;
- “Money” means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments;
- “Monetary value” means a medium of exchange, whether or not redeemable in money.

As for CEX it is a **money transmitter under federal law** and it provides its customers with online service of **exchange of virtual currency**, which (i) is not authorized or adopted by the United States or a foreign government; and (ii) is not a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

Generally, CEX is able to operate an exchange process in three modifications as described below.

Case 1. Fiat currency-virtual currency pairs.

This feature means CEX allows customers to fund their accounts with fiat or virtual currencies, exchange fiat to virtual currencies and vice versa and withdraw fiat or virtual currencies.

Case 2. Virtual currency pairs without using of fiat currencies.

This feature means CEX allows customers to fund their accounts and withdraw only virtual currency (and thus exchange only virtual currency to another virtual currencies). Thus, CEX deals only with virtual currencies and no fiat currencies are used throughout the process from its beginning to the end.

Case 3. Virtual currency pairs with using of fiat currencies as an intermediary.

This feature means CEX allows customers to fund their accounts and withdraw only virtual currencies. However, exchange within the CEX platform may include the mediation of fiat currency. For example, a customer funds his or her account with Bitcoins in purpose to exchange them to Ether.

Suppose, it would be more profitable for the customer to do it through USD pair (BTC/USD, then ETH/USD). Please take into consideration, Bitcoins-USD and USD-Ether exchanges will proceed only inside CEX platform without engaging customer's fiat currency. Finally, the customer will withdraw only virtual currency.

Please also note,

- CEX does not exchange government-issued currency pairs. Governmental-issued currencies are held in CEX's bank account until they are used for trading. CEX also holds its users' government currency received in exchange for virtual currency. However, CEX's acceptance of those government currencies should not trigger licensing requirements because they are not accepted in connection with any transmission to any third parties. They are instead accepted in connection with a blind exchange for virtual currency;
- Exchange is performed solely in favour of our customers, means convertible currencies could only be transferred to customer's virtual or bank accounts, not to accounts of any other persons. So, **CEX does not transmit funds or another monetary value from one person to another;**
- CEX does accept only wire transfers, credit cards and virtual currency. Its platform is not programmed to accept checks, negotiable instruments, or any other analogous form of payment. No checks or other transmittal instruments enter into a CEX transaction, including any check, draft, money order, negotiable order of withdrawal or similar types of negotiable instruments. As well as CEX does not sell, issue or deliver checks, money orders or other instruments itself, hence create no obligation by CEX or anyone else to pay anyone in the future. Unlike checks and negotiable instruments, Bitcoin has no issuer and does not represent an obligation by any party to pay.

IV. CONCLUSION

Considering the current provisions of the Uniform Money Services Act and absence of specific virtual currency regulation in the State of Arkansas, we believe that proposed exchange process in all three forms (Case 1 to 3) meet no licensing requirements.

Nevertheless, we respectfully request a determination by the Arkansas Securities Department, whether proposed CEX's business activity requires a license under the Uniform Money Services Act in regard to activity specified in Case 1, Case 2 and Case 3 above.

V. ATTACHMENT

- (1) Independent compliance audit report 2017;**
- (2) IRS BSA examination report 2018.**

Sincerely,

By  _____

Oleksandr Lutskevych, CEO

CEX.IO LTD